

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required): ☐ Green Bay Division ☒ Milwaukee Division

## I. (a) PLAINTIFFS

Kriz, Nicole R.

(b) County of Residence of First Listed Plaintiff Anchorage AK  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attached

## DEFENDANTS

United States of America  
Blue Cross Blue Shield Federal Employee Program

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See Attached

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC sec. 2671

Brief description of cause:

FTCA for medical injuries sustained at Milwaukee VA Clinics and Hospital

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
250,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/02/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jerome A. Hierseman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

MAG JUDGE

ATTACHMENT TO CIVIL COVER SHEET

I.(c) Attorneys  
Plaintiff:

End, Hierseman & Crain, LLC  
Jerome A. Hierseman  
600 N. Broadway, Suite 300  
Milwaukee, WI 53202  
(414) 224-1221

Defendants:

United States of America  
Matthew D. Krueger  
517 E. Wisconsin Avenue  
Milwaukee, WI 53202  
(414) 297-3372

Blue Cross Blue Shield Federal Employee Program  
Unknown

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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NICOLE R. KRIZ  
8419 Jupiter Drive,  
Anchorage, AK 99507

Plaintiff,

Case No. 20CV

v.

UNITED STATES OF AMERICA  
c/o U.S. Attorney for Eastern District of Wisconsin  
Matthew D. Krueger  
517 E. Wisconsin Ave.  
Milwaukee, WI 53202

BLUE CROSS BLUE SHIELD FEDERAL EMPLOYEE PROGRAM  
PO Box 105557  
Atlanta, GA 30348-5557

Defendants.

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**COMPLAINT**

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NOW COMES the above-named Plaintiff, by her attorneys, End, Hierseman & Crain, LLC, and as and for a cause of action against the above-named Defendants, allege and show to the court as follows:

**PARTIES**

1. The Plaintiff, Nicole R. Kriz is an adult citizen of the State of Alaska and resides at 8419 Jupiter Drive, Anchorage, Alaska 99507.

2. The Defendant, the United States of America, is the proper party to this action brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* which at all times was acting through the Clement J. Zablocki VA Medical Center (hereinafter “VA”) in Milwaukee, Wisconsin.

3. Blue Cross Blue Shield Federal Employee Program, is a government employee health benefit plan. Upon information and belief, the Blue Cross Blue Shield Federal Employee Program, and/or Anthem Blue Cross and Blue Shield – Wisconsin paid health claims on behalf of the plaintiff for medical care and services rendered as a result of the medical negligence, which is the subject of this case. Blue Cross Blue Shield Federal Employee Program and/or Anthem Blue Cross and Blue Shield – Wisconsin may be entitled to reimbursement for related paid claims if plaintiff recovers through settlement or judgment.

#### **JURISDICTION AND VENUE**

4. The Plaintiff is informed and believes that, in this case, if the United States were a private person, liability would be imposed under the laws of the State of Wisconsin upon the practice, physicians, staff and other agents, servants, and employees charged with the responsibility for the medical care and treatment of Nicole R. Kriz, acting within the course and scope of their employment with the VA.

5. This Court has jurisdiction of this action pursuant to its Federal Question Jurisdiction as provided for by 28 U.S.C §§ 1331 and 1346, in that the action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2761, *et seq.*, and the United States government is a defendant.

6. Venue is proper in this District and Division because a substantial part of the events or omissions giving rise to the claim occurred in this District and Division.

7. On April 6, 2019, Plaintiff, Nicole R. Kriz timely served via hand delivery an Administrative Claim pursuant to 28 U.S.C. § 2675. This claim was denied on September 5, 2019.

### **GENERAL FACTUAL ALLEGATIONS**

8. Nicole R. Kriz, who suffers from Actinic Keratosis, went to the VA on April 17, 2017 for photodynamic therapy to treat three areas of lesions. The therapy performed inappropriately was applied to the entire face of Nicole R. Kriz, resulting in a severe phototoxic reaction, burns, scarring and residual disfigurement.

### **CAUSES OF ACTION** **FIRST CAUSE OF ACTION- NEGLIGENCE**

9. Re-allege and incorporate all of the allegations set forth in the previous paragraphs.

10. That the Defendant, United States of America, through the VA and its employees, agents and/or apparent agents, rendered professional medical services, including but not limited to the period on or about April 17, 2017 and following; further, that said Defendant, by its employees, agents and/or apparent agents, failed to exercise ordinary care and medical skill in keeping with their profession and the area of the profession in which they specialized and in the manner in which their agents, employees and/or apparent agents, diagnosed, cared, treated and rendered medical services to Nicole R. Kriz.

11. As a result of the causal negligence of the Defendant, by its agents, employees and/or apparent agents, Nicole R. Kriz has endured in the past and will continue to endure in

the future the following damages, including but not limited to: pain, suffering and disability; economic loss, including but not limited to, medical and hospital expenses and a loss of earning capacity all in an unspecified amount pursuant to Wisconsin Statute.

12. As a result of the causal negligence of the Defendant, by its agents, employees and/or apparent agents, the Defendant is directly liable to Nicole R. Kriz in an amount to be proven at trial.

### **SECOND CAUSE OF ACTION- INFORMED CONSENT**

13. Re-allege and incorporate all of the allegations set forth in the previous paragraphs.

14. That the Defendant, through its agents, employees and/or apparent agents, failed to properly inform, pursuant to Wis. Stat. § 448.30, and the common law of the State of Wisconsin, the Plaintiff that there were reasonable alternative treatments during and following the original procedure, and failed to advise of the benefits and risks of the treatments rendered.

15. As a result of the failure to provide appropriate informed consent by the Defendant, through its agents, employees and/or apparent agents, Nicole R. Kriz suffered injuries more fully set forth in paragraph 11.

16. As a result of the failure to provide appropriate informed consent, the Defendant is directly liable to Nicole R. Kriz.

WHEREFORE, the above Plaintiff, Nicole R. Kriz, demands judgment against the Defendant as follows:

1. For the plaintiff, in the amount of \$250,000.00;
2. For a determination of the subrogation rights of Blue Cross Blue Shield Federal Employee Program and/or Anthem Blue Cross and Blue Shield - Wisconsin, if any.
3. For interest, together with the costs, disbursements and attorney fees of this action;
4. For any other remedy the court deems just and equitable under the circumstances.

Dated this 2<sup>nd</sup> day of March 2020.

END, HIERSEMAN & CRAIN, LLC  
Attorneys for Plaintiff

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